

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, THE
EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF
PUERTO RICO, AND THE PUERTO RICO PUBLIC
BUILDINGS AUTHORITY,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**STATUS REPORT OF FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO REGARDING COVID-19
PANDEMIC AND PROPOSED DISCLOSURE STATEMENT SCHEDULE**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), and the Puerto Rico Public Buildings Authority (“PBA”, and collectively with the Commonwealth

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

and ERS, the “Debtors”), pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”)², respectfully submits this status report (the “Status Report”) in connection with the *Order Regarding Status Report of Financial Oversight and Management Board for Puerto Rico Regarding COVID-19 Pandemic and Proposed Disclosure Statement Schedule* [ECF No. 14679] (the “Scheduling Order”).

Background

1. As the Court is aware, on February 28, 2020, the Oversight Board filed an *Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 11946] (the “Plan”) and a related disclosure statement [ECF No. 11947] (the “Disclosure Statement”). Subsequently, however, and in response to the spread of COVID-19 in Puerto Rico, the Government measures adopted to counteract it, and the consequential effects on the people and economy of Puerto Rico, on March 23, 2020, the Oversight Board filed the *Urgent Motion to Adjourn Hearing to Consider the Adequacy of Information Contained in the Disclosure Statement and Related Deadlines* [ECF No. 12485] (the “Adjournment Motion”).

2. On March 26, 2020, the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) filed its *Informative Motion Regarding the Government of Puerto Rico’s Response to COVID-19 and the Impact on These Title III Cases* [ECF No. 12542], which provided a summary of the government of Puerto Rico’s (the “Government”) response to COVID-19 as of such date and noted the Government’s support for the Oversight Board’s request in the Adjournment Motion.

3. On March 27, 2020, the Court entered the *Order Granting Motion to Adjourn Hearing to Consider the Adequacy of Information Contained in the Disclosure Statement and*

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

Related Deadlines [ECF No. 12549] (the “Adjournment Order”), granting the relief requested in the Adjournment Motion, and directing the Debtors to file a status report “setting forth, in summary terms, the effects of COVID-19 on the Commonwealth and the measures being undertaken in the Commonwealth to address the pandemic, and a proposed schedule for the Disclosure Statement Hearing and related deadlines” on or before May 1, 2020. Adjournment Order ¶ 3.

4. On April 21, 2020, in connection with the April 22, 2020 omnibus hearing, the Oversight Board filed its *Status Report of the Financial Oversight and Management Board Pursuant to Order Dated April 13, 2020 Regarding Procedures for April 22, 2020 Omnibus Hearing* [ECF No. 12910] (the “FOMB April Status Report”), which provided a summary of the intervening measures the Oversight Board had taken together with the Government of Puerto Rico to address the COVID-19 pandemic. Similarly, AAFAF filed its *Status Report of the Puerto Rico Fiscal Agency and Financial Advisory Authority Regarding the Government of Puerto Rico’s Recent Activities in Response to the Ongoing COVID-19 Pandemic* [ECF No. 12921] (the “AAFAF April Status Report”), detailing the impact of COVID-19 on Puerto Rico and its economy, and the aid received and measures taken to combat the virus.

5. On May 1, 2020, the Oversight Board filed its *Status Report of the Financial Oversight and Management Board for Puerto Rico Regarding the COVID-19 Pandemic and Proposed Disclosure Statement Schedule* [ECF No. 13018] (the “FOMB May Status Report”), which noted that, among other things, “[g]iven the continuing uncertainty created by the COVID-19 pandemic, the Oversight Board’s immediate focus is to ensure the health and well-being of the people of Puerto Rico and to assess the short- and medium-term impact of the pandemic on Puerto Rico’s economy Before the Debtors’ plan of adjustment and disclosure statement process can

move forward, the Oversight Board must assess the pandemic's impact and extremely difficult recovery ahead for Puerto Rico.” FOMB May Status Report ¶¶ 12-13.

6. On July 15, 2020, the Oversight Board filed its *Status Report of the Financial Oversight and Management Board for Puerto Rico Regarding the COVID-19 Pandemic and Proposed Disclosure Statement Schedule* [ECF No. 13660] (the “FOMB July Status Report”), which noted that, among other things, “[h]aving completed the process of certifying the Commonwealth fiscal plan and corresponding budget, the Oversight Board has resumed discussions with AAFAF concerning the terms of a plan of adjustment . . . [and] anticipates that, in the coming weeks, the Oversight Board and AAFAF shall entertain discussions with creditors . . . with the guidance of the mediation team led by the Honorable Judge Barbara J. Houser, to address the new reality created by the COVID-19 pandemic.” FOMB July Status Report ¶ 17.

7. On September 9, 2020, the Oversight Board filed its *Status Report of Financial Oversight and Management Board for Puerto Rico Regarding COVID-19 Pandemic and Proposed Disclosure Statement Schedule* [ECF No. 14195] (the “FOMB September Status Report”), which noted that, among other things, “[w]hile parties have re-engaged, both formally and informally, in light of (a) the nascent stage of such discussions, (b) the current state of material litigations before the Court, the determinations of which shall influence the tenor of such discussions, and (c) the political and electoral process on-Island, the Oversight Board submits it is premature to propose a schedule for consideration of the Debtors’ Plan and Disclosure Statement.” FOMB September Status Report ¶ 15.

8. The Oversight Board requested in the FOMB September Status Report that it be permitted to provide the Court an updated status report on the Oversight Board’s position on or before October 25, 2020, “which will allow the Oversight Board time to assess the fiscal plan’s

assumptions, and report on the progress (and, hopefully, the completion) of plan discussions with AAFAF, creditors and the Court-appointed mediation team.” *Id.* ¶ 16.

9. On October 20, 2020, the Court entered the Scheduling Order, setting October 25, 2020 as the deadline for the Oversight Board to file this Status Report.

Status of the Oversight Board

10. Pursuant to PROMESA, the Oversight Board is composed of up to seven (7) members, nominated by either the President of the United States or members of Congress. On August 31, 2019, the three-year term of each Oversight Board member concluded, but all seven members remained members pursuant to PROMESA § 101(e)(5)(C) pursuant to which each member was allowed to continue until replaced by the President. On August 31, 2020, the resignations of Carlos M. García and José Ramon González became effective, and on October 5, 2020, the resignation of José B. Carrión III, Chairman of the Oversight Board, became effective. On October 6, 2020, David A. Skeel, Jr. was appointed Chairman of the Oversight Board. On October 7, 2020, President Donald J. Trump appointed Justin Peterson to replace Arthur J. González as member of the Oversight Board. The Oversight Board continues to carry out all functions and duties while awaiting appointment or reappointment of Board members.

Physical and Political Conditions on the Island

11. Since the submission of the FOMB September Status Report, the Oversight Board and the Government have continued to collaborate and to take all necessary steps to protect the health and welfare of the people of Puerto Rico from the COVID-19 virus, while also slowly and prudently reopening critical governmental functions and businesses as appropriate and providing the people of Puerto Rico with ongoing reasonable, comprehensive, and sustainable solutions. As

of October 25, 2020, there are 31,737 confirmed and likely cases of COVID-19 and 801 deaths caused by the disease on the Island.³

12. As noted in the FOMB September Status Report, the Commonwealth is in the midst of the Atlantic hurricane season, having already experienced the effects of tropical storms Isaias and Laura. In particular, Tropical Storm Isaias and Tropical Storm Laura left up to 400,000 and 200,000 PREPA customers, respectively, without power for a time.⁴ The Oversight Board continues to work with the Government to respond to these challenges.

13. Importantly, with the Commonwealth entering the November election, the Commonwealth will have a new governor. During the intervening period, much focus has been placed on the gubernatorial election process, with candidates stating their respective visions for the best path forward for the Commonwealth and the restructuring of the Commonwealth's indebtedness. At the same time, the Oversight Board continues its efforts and work with Governor Vázquez to address such restructuring and the needs of the Commonwealth to reach and gain access to the capital markets. These include the recently announced effort to issue refunding bonds to replace outstanding indebtedness of the Puerto Rico Aqueduct and Sewer Authority ("PRASA") which, upon effectiveness, will result in future debt service benefits for PRASA.⁵

³ Departamento de Salud, COVID-19 Cases in Puerto Rico, *available at* <http://www.salud.gov.pr/Pages/coronavirus.aspx>.

⁴ Forbes, Tropical Storm Isaias Batters Puerto Rico, On Track Toward Florida and the East Coast, *available at* <https://www.forbes.com/sites/nicholasreimann/2020/07/30/tropical-storm-isaias-batters-puerto-rico-on-track-toward-florida-and-the-east-coast/#4917eb633bf2>.

⁵ Bloomberg Law, Puerto Rico Water Agency Readies \$3 Billion Bond Refinancing, *available at* <https://news.bloomberglaw.com/bankruptcy-law/puerto-rico-water-agency-readies-3-billion-bond-refinancing>.

Timeline for Debtors' Plan of Adjustment and Disclosure Statement

14. As noted in the FOMB September Status Report, the Oversight Board has resumed discussions with AAFAF concerning the terms of a plan of adjustment and what, if any, modifications or amendments need to be proposed to the proposed Plan and Disclosure Statement filed with the Court on February 28, 2020.

15. The Oversight Board also resumed formal discussions with creditors party to the Plan Support Agreement, as amended on March 13, 2020 and April 1, 2020, with the guidance of the mediation team led by the Honorable Judge Barbara J. Houser, to address the new reality created by the COVID-19 pandemic. Such discussions led to the exchange of proposals in August 2020. On September 30, 2020, and in response to the needs of certain parties to such discussions, the Oversight Board publicly disclosed the respective August proposals. Notwithstanding such disclosure and what some unrelated parties have asserted are differences unable to be overcome, the Oversight Board and its advisors continue to engage in active dialogue with individual creditors and their respective advisors, both those party to the Plan Support Agreement as well as other notable parties in interest, in an effort to bridge such differences and to provide diligence for the positions being taken and the economic projections underlying each proposal. Regardless of the outcome of such discussions, the Oversight Board anticipates filing a plan of adjustment and a corresponding disclosure statement as soon as practically possible and to proceed promptly with approval and confirmation thereof.

16. Notwithstanding the steps being undertaken, and as fully set forth in the response filed by the Oversight Board in connection with the motion of the PSA Creditors to arbitrarily impose a deadline for (a) the submission of a plan of adjustment and disclosure statement, (b) the consideration of the Court and (c) the effectiveness of such plan, the Oversight Board submits it is

not only inappropriate, but also premature, to propose a schedule for consideration of the Debtors' Plan and Disclosure Statement. Necessary diligence is ongoing to address inquiries for information or possible avenues for resolution. Additionally, although the Commonwealth's fiscal plan has been certified, the Oversight Board is mindful that the uncertainty of the timing of the cessation of the ongoing COVID-19 pandemic, fiscal and economic determinations announced by authorities in connection with the pandemic, and the challenges presented by the ongoing hurricane season require that the fiscal plan's assumptions continue to be tested in the coming months. Indeed, the uncertainty is national, as frequently reaffirmed by the Chairman of the Federal Reserve Board and multiple corporate leaders. Furthermore, political and legislative calendars, including the ongoing electoral process and the closure of the current legislative sessions, impact the timing associated with receiving governmental assent and gaining legislative approval for the issuance of indebtedness pursuant to a plan of adjustment, which approval is deemed desirable due to its impact on the debt's trading value.

17. The Oversight Board submits that additional time is required to complete such diligence, discern the possible direction of such discussions and complete PROMESA's requisites for the filing of a proposed, revised plan of adjustment. Accordingly, the Oversight Board requests that it be permitted to provide the Court an updated status report on the Oversight Board's position on or before **December 4, 2020** (prior to the scheduled December 9, 2020 omnibus hearing). In the event that the Oversight Board submits a plan of adjustment and related disclosure statement prior to such date, the Oversight Board will also seek to establish a schedule for the Court's consideration thereof.

Claims Resolution Process

18. As the Court is also well aware, due to restrictions imposed by (i) the Governor of Puerto Rico's executive orders concerning COVID-19⁶ and (ii) the United States District Court for the District of Puerto Rico's orders directing all civil and criminal proceedings in the District of Puerto Rico requiring an in-person hearing be continued until at least Monday, October 5, 2020,⁷ the Debtors have filed multiple notices adjourning hearings on pending omnibus objections to claims (the "Objections").⁸ See, e.g., ECF Nos. 12750, 13232, 13702, 14138. The Debtors understand that, due to the restrictions in place, claimants who wish to appear and be heard at any hearing on the Objections have been unable to attend scheduled omnibus hearings in person.

⁶ The executive orders include (i) *Executive Order of the Governor of Puerto Rico, Hon. Wanda Vázquez Garced, to Make Viable the Necessary Government and Private Closures to Fight the Effects of Coronavirus (COVID-19) and Control the Risk of Contagion on Our Island*, Administrative Bulletin No. OE-2020-023, (ii) *Executive Order of the Governor of Puerto Rico, Hon. Wanda Vázquez Garced, in Order to Continue the Measures Taken to Control the Risk of Contagion of the Coronavirus (COVID-19) in Puerto Rico*, Administrative Bulletin No. OE-2020-033, (iii) *Executive Order of the Governor of Puerto Rico, Hon. Wanda Vázquez Garced, to Extend the Curfew, Continue the Gradual Reopening of Several Economic Sectors, and Other Related Purposes Regarding the Measures Taken to Control the Risk of Coronavirus Contagion (COVID-19) in Puerto Rico*, Administrative Bulletin No. OE-2020-041, (iv) *Executive Order of the Governor of Puerto Rico Hon. Wanda Vázquez Garced, in Order to Establish a New Curfew, Continue the Economic Reopening, and Other Purposes Relating to COVID-19*, Administrative Bulletin No. OE-2020-044; and (v) *Executive Order of the Governor of Puerto Rico Hon. Wanda Vázquez Garced, in Order to Extend the Established Curfew and Restrict the Measures Taken to Control the Spread of COVID-19*, Administrative Bulletin No. OE-2020-062.

⁷ *Order Concerning Proceedings Before the United States District Court of Puerto Rico* [Misc. No. 20-0088-GAG, ECF No. 3]; *Order Continuing Civil and Criminal Proceedings* [Misc. No. 20-0088-GAG, ECF No. 14]; *Amended Order Continuing Civil and Criminal Proceedings* [Misc. No. 20-0088-GAG, ECF No. 17]; *Amended Order Continuing Civil and Criminal Proceedings* [Misc. No. 20-0088-GAG, ECF No. 19]; *Second Amended Order Continuing Civil and Criminal Proceedings* [Misc. No. 20-0088-GAG, ECF No. 20]; *Third Amended Order Continuing Civil and Criminal Proceedings* [Misc. No. 20-0088-GAG, ECF No. 21]

⁸ The Objections are identified in Appendix A to the *Notice of Adjournment of Omnibus Objections Scheduled for Hearing at the September 16, 2020 Omnibus Hearing to the October 28, 2020 Omnibus Hearing* [ECF No. 14138].

Further, the Debtors understand that Court Solutions, the telephonic service provider for the omnibus hearings, is only available to attorneys, and does not permit *pro se* claimants or their interpreters to appear telephonically.

19. As a result of these adjournments, over one hundred sixty omnibus objections to claims, affecting over 60,000 claimants, remain pending before the Court.

20. To resolve the large number of outstanding objections, the Debtors proposed establishing a satellite hearing site at the Prime Clerk collection center located at Citi Towers, 250 Ponce de León Ave., Suite 503, Hato Rey, San Juan, PR 00918 (the “Satellite Site”), at which claimants, along with their interpreters, may be permitted to appear and speak at a hearing on the Objections. This Satellite Site will comply with all locally-imposed requirements for protecting the health and safety of visitors to the site.

21. On September 29, 2020, the Court entered the *Order Regarding Pending Omnibus Objection to Claims* [ECF No. 14419] (the “Satellite Hearing Procedures Order”), scheduling hearings at the Satellite Site for October 29, 2020, November 18, 2020, and November 20, 2020, at which remaining objecting claimants shall appear and speak as to such Objections.

22. Moving forward with such reconciliation process allows the Oversight Board to more actively engage with the Creditors’ Committee on the terms of a plan of adjustment as the universe and amount of unsecured claims will be more apparent.

Dated: October 25, 2020
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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